



GENERAL SESSION

HAZARDOUS WASTE MANAGEMENT COMMISSION (HWMC)

February 10, 2005

9:30 A.M.

1738 East Elm Street

Bennett Springs/Roaring River Conference room

Jefferson City, Missouri 65102

COMMISSIONERS PRESENT

Ben Kessler, Chairman
Patrick Gleason, Vice-Chairman
Norella Huggins
Robert Saunders
Tim Warren
Susan Williamson

STAFF PRESENT

Robert Geller, Interim HWP Director
Robbin Stout, Secretary to Commission
Shelley Woods, Counsel to the Commission

CALL TO ORDER

Ben Kessler, HWMC Chairman called the General Session to order at 9:30 A.M.

EXECUTIVE SESSION

An Executive Session was not held since there were no Executive Session Agenda items.

ADMINISTRATIVE CHANGES

Dan Schuette, Interim Director, Air and Land Protection Division, (ALPD), informed the Commission of recent administrative changes which include the following:

- Jim Werner, removed as Director, ALPD
- His own role as Interim Director of ALPD,
- Mike Wells, as Interim Director of Missouri Department of Natural Resources,
- former Senator Doyle Childers as Director of the department,
- Ed Galbraith's reassignment from Director of HWP to Director of Water Protection Program, (WPP)
- and Robert Geller as Interim Director of HWP.

Commissioner Warren read aloud a letter of appreciation from the HWMC, expressing their appreciation for Ed Galbraith's service of leadership in the HWP and congratulated him on his appointment to the WPP.

APPROVAL OF MINUTES

Motion to approve the December 15, 2004, General Session minutes was made by Commissioner Gleason and seconded by Commissioner Huggins.

Motion carried.

Motion to approve the November 18, 2004, Daimler Variance conference call minutes was made by Commissioner Huggins and seconded by Commissioner Williamson.

Motion carried.

FORD MOTOR COMPANY, CLAYCOMO PLANT VARIANCE REQUEST

Tom Judge, Enforcement Section, requested the Commission to vote on a variance regarding the Ford Motor Company's Claycomo Plant. Mr. Judge asked on behalf of the department that if the Claycomo Plant variance is granted and due to some cost to the regulatory process, that consideration is made for a community improvement project to offset the cost of the variance. He presented information and answered questions regarding the Claycomo Plant. Mr. Judge compared the Claycomo Plant variance to a recent essentially identical variance granted to Daimler Chrysler.

Chairman Kessler acknowledged Robin Straight, representative of Ford Motor Company, Claycomo Plant asking if he had any questions or comments regarding the variance. Mr. Straight had no questions but spoke in favor of the variance.

Motion to grant the variance was made by Commissioner Gleason and seconded by Commissioner Warren.

Commissioner Huggins stated that she thought the Ford Motor Company, Claycomo Plant variance request is treated exactly as the Daimler Chrysler variance had been treated. Commissioner Saunders agreed stating that he thought they should all be treated the same.

Motion carried

FORD MOTOR COMPANY, HAZELWOOD PLANT VARIANCE REQUEST

Tom Judge, Enforcement Section, requested the Commission to vote on a variance regarding the

Ford Motor Company's Hazelwood Plant. Mr. Judge proposed that this variance be handled in the same way that the Claycomo Plant variance was handled.

Motion to grant the variance was made by Commissioner Gleason and seconded by Commissioner Saunders.

Motion carried.

MIDWEST OIL REFINING COMPANY VARIANCE REQUEST

Kathy Flippin and Dave Giarratano, Enforcement Section, requested the Commission to vote on a one-time variance for the 2004 Hazardous Waste Transporter License Fees regarding Midwest Oil Refining Company. They presented information and answered questions regarding the variance.

Julie E. Lamborn-Gettinger, representative for the Midwest Oil Refining Company read a prepared statement (attached) to the Commission and answered questions regarding Midwest Oil Refining Company and the oil recycling business in general. Stakeholder awareness was discussed, with the focus being on the need for continued outreach to and involvement of Stakeholders regarding changes or procedures involving the Hazardous Waste Transporter License Fees.

Commissioner Saunders raised the question of other small companies, their ability to pay the larger fee and the possibility of more variances being requested in the future. Kathy Flippin informed the Commission that the department also shared the concern but, that any changes effecting the fee bill structure would have to come from a higher level of legislative action and that she was not aware of any such action being taken at this time. Commissioner Huggins stated, that based on the information provided, she was in support of approving the Midwest Oil Refining Company Variance and did not expect there to be continued additional variance requests from other small companies.

Commissioner Warren asked Ms. Lamborn-Gettinger if she had any additional comments or questions. She told the Commission that she thought other small businesses had not come forth regarding the financial burden of the Hazardous Waste Transporter License Fees because of possibly believing that it would not help to do so. Ms. Lamborn-Gettinger said that she filed the variance because she believes in the fairness of the permitting system. Ms. Flippin and Mr. Giarratano answered questions regarding the comparison of the fee based on quantity or by mileage and the fee's distribution.

Motion to grant the variance was made by Commissioner Gleason and seconded by Commissioner Saunders.

Motion carried.

REFERRALS TO THE ATTORNEY GENERAL'S OFFICE (AGO)

Angela Oravetz, Enforcement Section requested that the following facilities be referred by the Commission to the AGO to compel compliance and pursue or negotiate a civil penalty:

- Palisades Yacht Club (ST0005079)
- WJ & NM Incorporated (d.b.a. Bill's Service) (ST0005615)
- C&N Convenience Store (ST0013260)

Motion to refer Palisades Yacht Club to the AGO in order to compel compliance and pursue or negotiate a civil penalty was made by Commissioner Saunders and seconded by Commissioner Gleason.

Discussion followed as Ms. Oravetz answered questions by the Commissioners assuring them that opportunities had been afforded the facility to avoid referral to the AGO.

Motion carried.

Motion to refer WJ & NM Incorporated to the AGO in order to compel compliance and pursue or negotiate a civil penalty was made by Commissioner Gleason and seconded by Commissioner Saunders.

Discussion followed as Ms. Oravetz answered questions by the Commissioners assuring them that opportunities had been afforded the facility to avoid referral to the AGO.

Motion carried.

Motion to refer C & N Convenience Store to the AGO in order to compel compliance and pursue or negotiate a civil penalty was made by Commissioner Gleason and seconded by Commissioner Warren.

Discussion followed as Ms. Oravetz answered questions by the Commissioners assuring them that opportunities had been afforded the facility to avoid referral to the AGO.

Motion carried.

The Commission noted the lengthy time involved in bringing some of these referrals before the Commission. Mike Martin, Enforcement Section assured the Commission that the department had worked with the facilities first to gain compliance as opposed to taking enforcement action. Robert Geller, Interim Director, HWP told the Commission that it was the department's desire to be as cooperative as possible and asked the Commission for suggestions.

Commissioner Warren suggested that when AGO referrals are requested there should be documentation (i.e. letters/memos) showing the department's attempts to contact the facility's representative and copies of any responses received from those contacts. The Commission

agreed that this would provide a balance of information from which the Commission could base its decision. Mr. Geller agreed to provide such information.

Commissioner Saunders pointed out the need for facilities to take compliance seriously enough to respond in a timely fashion and the repercussion upon the regulated community when they do not. Mike Martin told the Commission that the opportunity to meet with the department is offered to the facilities throughout the process and by the time it becomes an actual referral, the department has usually exhausted all means of communication. Commissioner Williamson asked if something of a “pre-referral” could be done, giving the facilities more of a chance to be involved early on, long before it becomes an actual referral to the AGO. Robert Geller agreed to consider the “pre-referral” suggestion, as long as it would not make the process any longer. Commissioners Williamson, Saunders and Warren agreed that it was more important that progress was being made and that the facility could plead its case to the Commission before it became an actual referral to the AGO. Kathy Flippin told the Commission that although the department is looking at a large workload and working with a limited number of staff, it remains open to suggestions to continue to do as much as possible to shorten the referral process while focusing on what would best protect the human environment.

ARKANSAS BEST FREIGHT-REGISTRY DISMISSAL PROPOSAL

Pia Capell, Superfund Section, requested the Commission to dismiss the Registry Proposal listing of Arkansas Best Freight. Ms. Capell informed the Commission that a Restrictive Covenant Easement on the property was filed to resolve the appeal and was approved. Shelley Woods, AGO explained the purpose of the Restrictive Covenant Easement. Ms. Capell gave a brief history and answered questions regarding the Arkansas Best Freight Registry Proposal Listing.

Motion to dismiss the Arkansas Best Freight Registry Proposal was made by Commissioner Gleason and seconded by Commissioner Williamson.

Motion carried.

-There was a 10-minute break at this time-

GM LEEDS UPDATE

Pia Capell, Superfund Section, updated the Commission on the General Motors-LEEDS (GM LEEDS) facility. Ms. Capell explained that this was an information only item. Shelley Woods, AGO explained that there was a resolution expected in March 2005 and answered questions regarding GM LEEDS.

PROCEDURES FOR EXECUTIVE SESSION GUIDELINES

On January 28, 2005, the HWMC’s Ad Hoc Committee (Commissioners Gleason, Warren and Huggins) met with Ed Galbraith, Staff Director, HWP, Shelley Woods, AGO, Joe Bindbeutel,

AGO, and Brett Berri, AGO to discuss Sunshine Law and Executive Session Issues. Commissioner Gleason read aloud the Procedure for Executive Session guidelines that the ad hoc Committee adopted, resulting from that meeting. Commissioner Gleason stated that the main goal of the committee is to have the Commission be as open and transparent to the public as possible.

Motion to adopt the Procedure for Executive Session guidelines was made by Commissioner Gleason and seconded by Commissioner Saunders.

Chairman Kessler asked Shelley Woods, AGO if she had any comments to make. Ms. Woods commented on the minutes of the January 28, 2005, Ad Hoc Committee on Sunshine Law and Executive Session Issues Meeting. Ms. Woods pointed out the following:

- in paragraph four of page one that it should read “Mr. Berri” as opposed to just “Berri”
- on page two, paragraph three, after Commissioner Huggins’ comments regarding “Librach v. Cooper”, there is no mention of Mr. Berri commenting that he did not read that case as broadly as did Commissioner Huggins.

Commissioner Huggins said she believed that Mr. Berri said he had not seen the sunshine law case. Ms. Woods responded saying that is not what Mr. Berri said. Shelley said Mr. Berri said he had read that case, was aware of that case and that he did not read it as broadly as did Commissioner Huggins. Commissioner Gleason said he did not recall and Commissioner Warren said he thought Mr. Berri said he was vaguely familiar or aware of the case but, did not recall Mr. Berri being in disagreement. Ms. Woods said she had double-checked with Mr. Berri and his memory was that he did say he did not read it as broadly as Commissioner Huggins. Commissioner Huggins said she had simply quoted from the text and did not offer an opinion. Shelley Woods said she thought what Mr. Berri said needed to be added to the minutes to correctly reflect what transpired in that meeting.

Shelley Woods said she wanted the Commission to understand that they may narrow instances where they go into closed session and choose to only go into closed session on specific topics but, that it is not required by the Sunshine Law. Ms. Woods also told the Commission that legal advice covers a broader area than litigation and settlement negotiations relative to litigation. Commissioner Gleason said that the Procedure for Executive Session is a living document and can be changed. Bill Bryan, Deputy Chief Counsel for Agriculture and Environment, AGO, introduced himself to the Commission. Mr. Bryan explained that he was attending the meeting in Mr. Berri’s place. He said that AGO has the duty, as the Commission’s lawyers, to insure that the Commission makes informed decisions based on public policy and not based on disputed interpretation of a legal opinion. Mr. Bryan told the Commission that the goal of the ad hoc Committee policy is admirable and it is not the purpose of the AGO to dispute it. He pointed out that Attorney General Nixon seeks transparency throughout state government.

Mr. Bryan told the Commission that he had read the sunshine act law case. He explained the history of the case and its relationship with the Sunshine Law and its relevancy to the ad hoc Committee Procedure for Executive Session Meeting minutes. He said that while the minutes fairly state a portion of what the opinion of the case stands for it is not what the holding of the court was. Mr. Bryan said that if portions of the court’s opinion are to be quoted it is also worth noting that in that same opinion the court said, “Admittedly the advise of an attorney is as

important to a governmental body as it is to a private party, plus the need to communicate candidly with an attorney is as important to a governmental body as it is to a private party and the public interest is served by protecting communications in both instances”. Mr. Bryan said his purpose was to help the Commission make an informed decision on how to go forward with its policy.

Commissioner Huggins said she did not think that the sunshine law case Mr. Bryan is referring to is germane to the policy choice. She said the reason she mentioned it was because Mr. Berri had cited several different cases but, he did not address this case, which is the only sunshine act law case that talks about confidential communications and she thought it would help to mention the case. Commissioner Huggins told Mr. Bryan that the sunshine act law case is not the basis for the policy. Mr. Bryan agreed said that the courts specifically said we need not address this issue and that it was not the law in that case. He said, however, if there were a misinterpretation of the meaning of the law, the AGO would be remiss in its duties if it did not inform the Commission of the full scope and meaning of the law.

Motion to adopt the Procedure for Executive Session guidelines was approved.

BROWNFIELDS/VOLUNTARY CLEANUP PROGRAM UPDATE

Chris Cady, Brownfields/Voluntary Cleanup Program, used a power point presentation to update the Commission on the progress of the Brownfields/Voluntary Cleanup Program. Mr. Cady discussed and answered questions regarding project development, the National Brownfields Conference in St. Louis and the status of the 2004 new site applications, offering the Commission insight into the effects of these new applications.

TANKS RISK-BASED CORRECTIVE ACTION RULE (RBCA) UPDATE

John Balkenbush, Tanks Section, updated and answered questions regarding remedial activities associated with the RBCA guidance. He discussed the number of sites that are presently remediated under the guidance, problems experienced, and ongoing activities of the Tanks Regulatory Development Group.

MONTHLY REPORTS/LEGISLATIVE UPDATES

There were no questions or comments regarding the Monthly Report.

Rob Morrison, Permits Section, informed the Commission and answered questions on the history and status of current legislative actions and their effect on the HWP. Commissioner Huggins, who had testified in favor of Senate Bill 225, said that there was broad base support in the regulated community for the fee restructuring, although there was some dissent on individual issues. Commissioner Huggins suggested to Mr. Morrison that legislative updates of Bill 225 are forwarded to the Commissioners by email attachment. Mr. Morrison agreed to do so.

PUBLIC INQUIRIES OR ISSUES

Robert Geller, Interim Director, HWP asked those in attendance if there were any public inquiries or issues anyone wanted to discuss at this time. There were no public inquiries or issues presented.

Commissioner Huggins had received a public inquiry before the meeting asking about the status of the rulemaking on incorporating the new RCRA rules. Rob Morrison, Permits Section, distributed handouts to the Commissioners of the schedule for rulemaking. Mr. Morrison said he has spoken with Kevin Perry, Reg Form, and that the department has agreed to work with an ad hoc stakeholder group to discuss federal rules. Mr. Morrison said that at this time, the focus will be on incorporation and not modification of the rules. The incorporation of some of the rules listed on the schedule was briefly discussed. Shelley Woods, AGO, explained that the list was a management tool that the Environmental Protection Agency (EPA) uses to keep track of the rules and the allowable time for states to adopt these rules. Mr. Morrison referred to a handout pointing out rules listed that were scheduled to be submitted to the EPA.

OTHER BUSINESS

Commissioner Warren announced his new employment with Rechargeable Battery Recycling Corporation

Commissioner Huggins requested that Tim Eiken, HWP Director's Office provide the Commission with a new set of Statutes and Tanks Statutes.

Tim Eiken, Rules Coordinator, HWP, provided an update on the DERT rules. Commissioner Huggins reminded the Commission that JCAR promised a Consent Bill but because there was opposition to the bill in the Hearing, it will not go as a Consent Bill in the Senate. She also mentioned the possibility of getting a bill in the future or having it attached to another bill.

FUTURE MEETINGS

Chairman Kessler asked that the April 15, 2005 meeting date be changed to accommodate his schedule, since he would be out of town that week. The Commissioners agreed to view their private calendars and get back with the Commission Secretary regarding the date change.

Commissioner Huggins proposed a joint commission meeting for 2005. She also suggested that a joint commission meeting be held in Kansas City to coincide with the Kansas City Chamber of Commerce Environmental Reception, since other Commissions sometimes attend the reception. It was noted that the Commission had agreed to attend the reception every other year, as a way to save the state money. Because of budget cuts and that it had attended the reception last year Shelley Woods, AGO informed the Commission that it is not mandatory for the Commission to do so. The Commission expressed a desire to attend the reception and hold a joint commission meeting in Kansas City. Robert. Geller, Interim Director, HWP, said he would look into it.

ADJOURNMENT

Motion to adjourn was made by Commissioner Gleason and seconded by

Commissioner Huggins.

Motion carried and the meeting was adjourned.

Respectfully Submitted,

Robbin Stout
Commission Secretary

APPROVED

Ben Kessler, Chairman

Date: _____